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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/540,987	03/31/2000	Yasutoshi Shindo	31581-159316	3235

26694 7590 09/02/2003

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EXAMINER

CALDWELL, ANDREW T

ART UNIT	PAPER NUMBER
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2157

DATE MAILED: 09/02/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/540,987

Applicant(s)

SHINDO, YASUTOSHI

Examiner

Andrew Caldwell

Art Unit

2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 March 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-7 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**II. DETAILED ACTION**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-2, drawn to a system for downloading an application program to a client but using a local application program to provide fault recovery if the download fails, classified in class 709, subclass 221 – network computer reinitializing.
- II. Claims 3-7, drawn to a system for a system for rebooting a browser and storing data to complete a web transaction after the web server recovers from an error, classified in class 709, subclass 250 – network to computer interfacing.

The inventions are distinct, each from the other because:

Inventions II and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require the automatic transaction apparatus to switch to a resident application to make a transaction when the application cannot be downloaded from the web server. The subcombination has separate utility because it can be used in systems where memory leakage is not an issue and there is no need to reboot periodically.

Art Unit: 2157

1 Because these inventions are distinct for the reasons given above and have  
2 acquired a separate status in the art as shown by their different classification, restriction  
3 for examination purposes as indicated is proper.

4 Applicant is advised that the reply to this requirement to be complete must  
5 include an election of the invention to be examined even though the requirement be  
6 traversed (37 CFR 1.143).

7  
8 **Conclusion**

9 A shortened statutory period for response to this action is set to expire **one**  
10 **month (not less than 30 days)** from the mail date of this letter. Failure to respond  
11 within the period for response will result in **ABANDONMENT** of the application (see 35  
12 U.S.C. 133, M.P.E.P. 710.02, 710.02(b)).

13  
14 Any inquiry concerning this communication or earlier communications from the  
15 examiner should be directed to Andrew Caldwell, whose telephone number is (703)  
16 306-3036. The examiner can normally be reached on M-F from 9:00 a.m. to 5:30 p.m.  
17 EST.

18  
19 If attempts to reach the examiner by phone fail, the examiner's supervisor, Ario  
20 Etienne, can be reached at (703) 308-7562. Additionally, the fax numbers for Group  
21 2100 are as follows:

22  
23 Fax Responses: (703) 872-9306

24  
25 Any inquiry of a general nature or relating to the status of this application should  
26 be directed to the Group receptionist at (703) 305-9600.

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30  
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32  
33 Andrew Caldwell  
34 703-306-3036  
35 September 1, 2003